

EX PARTE OR LATE FILED

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JAN 21 1999

FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF COMMERCE

January 21, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington DC 20554

RE: CC Docket No. 98-147.

Dear Ms. Salas:

Please accept the original and two copies of the Ex Parte Comments of NorthPoint Communications regarding the Commission's Notice of Proposed Rulemaking Concerning Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Sincerely,

Ruth Milkman / DNS

Ruth M. Milkman

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1919 M Street, NW
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RE: CC Docket No. 98-147.

Dear Ms. Salas:

On January 19, 1999 and January 20, 1999, Steven Gorosh, Vice President and General Counsel of NorthPoint Communications and Ruth Milkman of The Lawler Group, counsel to NorthPoint, met with Tom Power, Paul Gallant, Kyle Dixon and Kevin Martin. On January 21, 1999, Kevin Cameron, Deputy General Counsel of NorthPoint and Ruth Milkman met with Linda Kinney to discuss issues in the *Advanced Wireline Services* Proceeding. In these meetings, NorthPoint discussed the spectrum unbundling issues set out in the attached handout.

Sincerely,

Ruth Milkman / DNS

Ruth M. Milkman

NorthPoint Communications, Inc.

The Need for Immediate Spectrum Unbundling

Section 706 Advanced Services

January 19, 1999



Price Squeeze is Significant

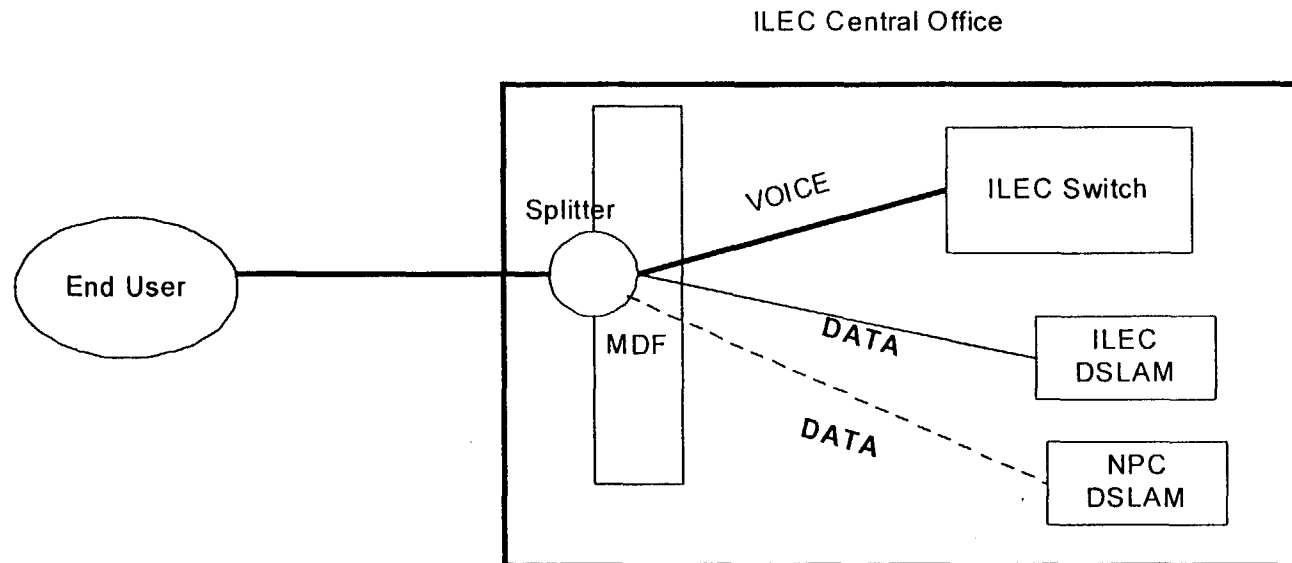
- Recent ILEC DSL charges threaten to kill facilities-based residential service competition through “Price Squeeze”
 - Total ILEC DSL charges as low as \$40/mo. are LESS than ILEC charges to CLECs for DSL “piece parts” (i.e., loops and collocation)
 - ILEC ADSL tariffs do not reflect any loop, collocation or OSS charges
- CLECs lose money matching ILEC prices BEFORE they recover cost of their networks, overhead and profit
 - Loop-specific costs (nrc and mrc) plus average collocation costs (recovered over three years) exceed 100% of \$40 price point in each of NorthPoint’s first states except Illinois (CA, MA, NY, DC, MI, GA, TX, FL, WA, PA, AR, CO, OR, MN, MO, NC, & MD)
 - Loop and collocation piece-parts are 182 % of \$40 price point in Florida
- Need for immediate FCC action is increasing
 - In CA, Pacific has reduced retail ADSL to \$39/mo. while CPUC has refused to order spectrum unbundling necessary for CLECs to compete on even terms
 - AOL deal with Bell Atlantic

Price Squeeze: Solutions

- 1) Separate subsidiary is a solution because ILEC purchases loops, collocation, and OSS access at arm's length
- 2) Different solutions REQUIRED for ILECs who reject separate subsidiary option:
 - ILEC must provide parity as to "spectrum unbundling"
 - If ILEC splits off and carries voice traffic for itself, it must split off and carry voice traffic for CLECs under same terms and conditions
 - ILEC must impute the loop, collocation and OSS charges imposed on CLECs
 - ILEC must tariff xDSL at a wholesale discount

One Loop Product Parity

- ILEC Keeps Voice and “Splits-Off” Data to CLEC on Same Terms and Conditions it Does For Itself
- Advantages:
 - No Service Disruption
 - Zero Additional Loop Cost
 - Change is Transparent to End User



ILEC Objections to Parity Arrangement are Vague and Misleading

■ No real question of “technical feasibility”

- Participants at the FCC’s technical conference unanimously agreed a parity arrangement is technically feasible
- If ILEC can split-off data traffic and deliver it to an ILEC DSLAM, it also can deliver it to a CLEC DSLAM
- PDO and Citizens Communications (a CA ILEC) are conducting a spectrum unbundling trial

■ No real question of “operational feasibility”

- Vague ILEC assertions are misplaced; in discussions with NorthPoint ILECs have been unable to identify ANY serious issues
 - No Unique Billing Issues
 - No Unique Maintenance Issues
 - If the ILEC runs a line test on the line, it should simply alert the end-user (which it would do anyway); ILEC and CLEC can negotiate mutually satisfactory arrangements to govern various contingencies

FCC Has Ample Authority to Order Spectrum Unbundling

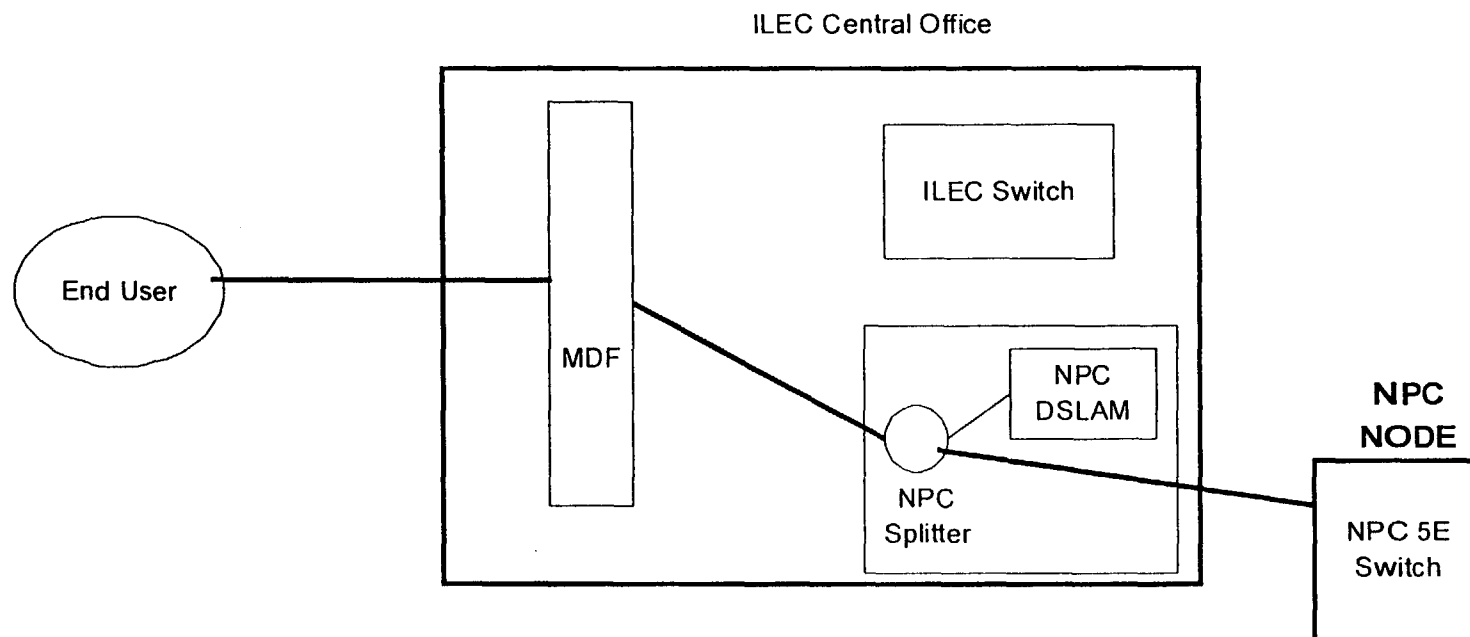
- FCC has authority to order spectrum unbundling under §§ 251(c)(3) and 251(d)(2) of the Act
- Satisfies the three-part test (Local Intercon. Order ¶¶ 273- 83)
 - Technically feasible
 - Requires a simple splitter and is already performed by the ILECs for their own ADSL service
 - No proprietary information
 - Access to a one-loop product is required in order to compete
 - Facilities-based CLECs will be unable to compete effectively in the residential market if they are forced to purchase a second loop when doing business with CLECs

Undesirable Alternative 1:

Voice Traffic Sent to NorthPoint 5E Switch

■ Disadvantage:

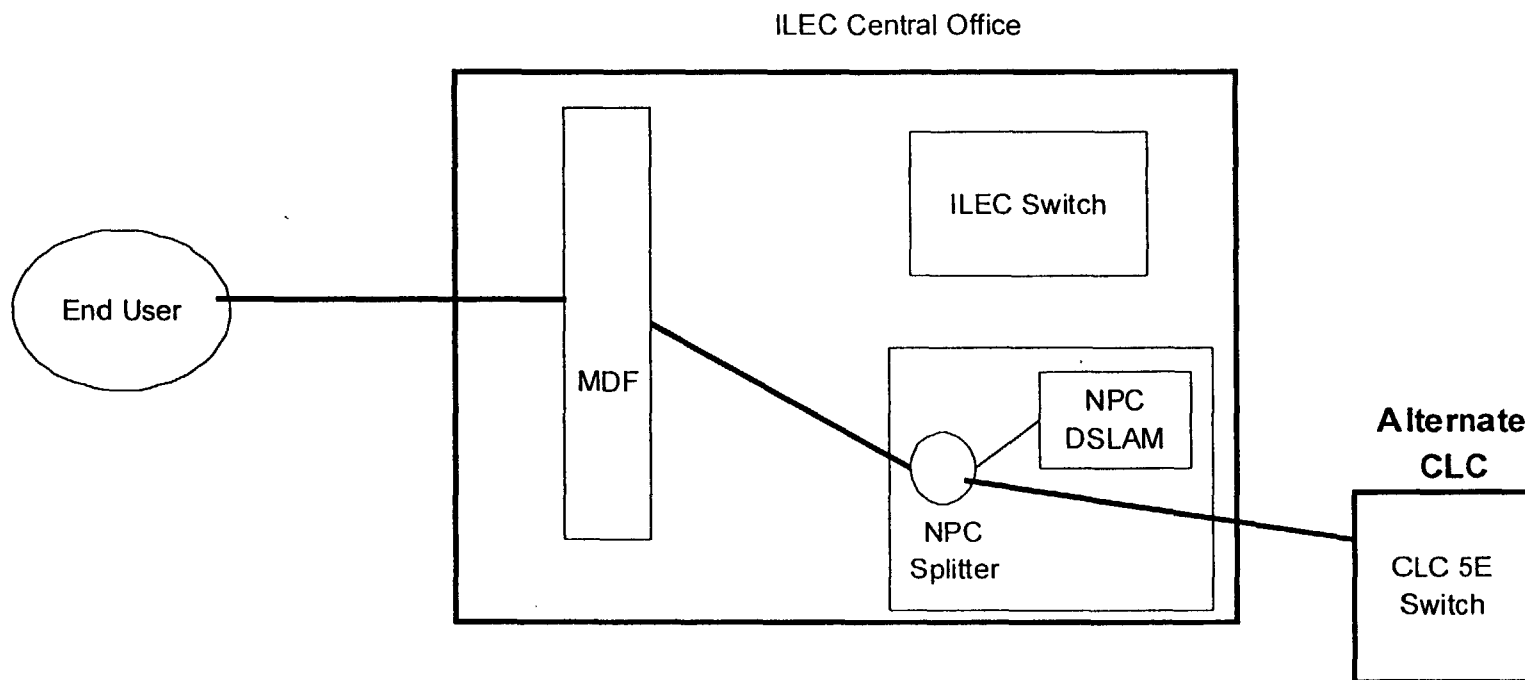
- Money and Focus to Build Voice Business will Dramatically Limit Broadband Deployment



Undesirable Alternative 2: Voice Traffic Sent to Alternate CLC

■ Disadvantages:

- End User Needs to Purchase Alternate Voice Service; Hot-Cut/Service Disruption Required; No Willing/Able CLECs (especially in residential areas)

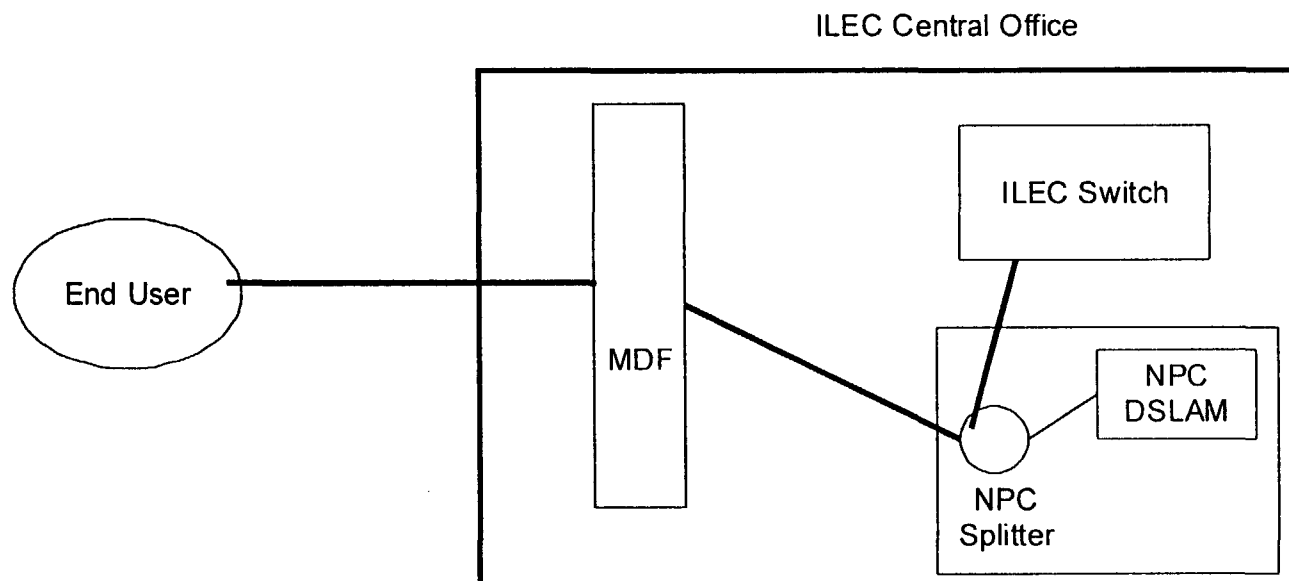


Undesirable Alternative 3:

Voice Traffic Sent to ILEC Via Unbundled Switching and Transport

■ Disadvantages:

- Significant Unbundled Switch & Transport Costs; Imposes Myriad of Unbundled Voice Requirements (e.g. OA & DA); Much Less Efficient than Parity Solution



Timeliness is Critical

- FCC should order immediate spectrum unbundling for all ILECs who currently offer “one-loop” products
 - CLECs ability to offer advanced services on a widespread basis is being stymied by the lack of a “one-loop” product
- In the alternative, FCC should order spectrum unbundling subject to 60 days to negotiate operational issues
- Finally, if the FCC initiates another comment cycle on spectrum unbundling, it should issue a final order within four months